

By Hand Delivery

July 3, 2001

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110

Re: Reply Comments of KeySpan Energy Delivery New England on the Department's
Rulemaking to Revise the Billing Procedures For Residential Rental Property
Owners Cited For Violation of the State Sanitary Code
D.T.E. 01-21

Dear Ms. Cottrell:

Boston Gas Company d/b/a KeySpan Energy Delivery New England, Colonial Gas Company d/b/a Key Span Energy Delivery New England, and Essex Gas Company d/b/a KeySpan Energy Delivery New England (collectively, "KeySpan") submit the following reply comments in the above referenced docket opposing the proposed revisions to 220 CMR § 29.00 et seq. the ("Sanitary Code Billing Regulations")¹. On June 22, 2001, KeySpan, Massachusetts Electric Company and Nantucket Electric Company (together, "MECO"), The Office of the Attorney General, the Low-Income Affordability Network ("LEAN"), and the NSTAR Companies² filed initial comments. In addition, the Department held a public hearing on June 26, 2001.

As stated in KeySpan's initial comments, and echoed by the initial comments of other parties in this proceeding, KeySpan believes that the Department's current Sanitary Code Billing Regulations are sufficient and that no changes are necessary or appropriate. The current regulations provide adequate protection for property owners and tenant customers of utilities and are administratively simple. The changes proposed by the Department would impose administrative compliance and cost burdens on utilities without providing additional protections or benefits to property owners or tenant customers and, depending upon the methodology adopted for implementing the regulations, could have the unintended effect of causing confusion over the allocation of payment responsibility. Moreover, as pointed out by MECO, the additional costs of investigating and processing sanitary code violations could result in higher costs for all ratepayers. Initial Comments

¹ KeySpan's reply comments do not address all issues raised by the Rulemaking Order nor all of the issues addressed by the initial comments of other parties. The absence of comment on any matters should not be construed as agreement.

² Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company.

of MECO, at 2. KeySpan also agrees with the Attorney General and LEAN that the Department's proposed regulations are lacking in deterrence value as compared to the current regulations and that final regulations should incorporate a provision that will discourage property owners from opting to commit violations of the sanitary code where the cost to do so is no greater than the cost to comply. Initial comments of the Attorney General, at 6; Initial Comments of LEAN, at 2-3. Accordingly, KeySpan recommends that the Department not adopt the proposed Sanitary Code Regulations attached to its May 25th Order Instituting Rulemaking (the "Order").

At the public hearing, the Department specifically requested that reply comments focus on potential means of determining the electric and gas usage of the appliances, outlets, or other energy consumption sources that are the subject of a sanitary code violation, and the method of calculating the cost of that usage to be billed to the property owner. In response to the Department's request, Keyspan suggests that the Department establish a working group of the utilities to develop a standard bill allocation methodology. KeySpan shares NSTAR's view that, in matters of sanitary code violations, the utility should be a disinterested stakeholder simply responsible for calculating a billing adjustment between a tenant customer and the property owner. Initial Comments of NSTAR, at 4. A standard bill-allocation methodology would reduce the number of disputes involving the application of the Sanitary Code Billing Regulations to a customer account. KeySpan also concurs with NSTAR's recommendation that the Department work with the Massachusetts Department of Public Health to develop a standard citation for a sanitary code violation pertaining to the commingling of electric or gas utility service as a means to further reduce utility involvement in landlord-tenant disputes. Id. at 5.

Conclusion

For all of the above reasons, KeySpan recommends that the Department continue to review Sanitary Code Violation Billing issues on a case-by-case basis. The current regulations provide an appropriate mechanism to address a cited violation of the state sanitary code by moving a utility bill out of the tenant's name and into the property owner's name as required by 105 CMR 410.354, while allowing an opportunity for an aggrieved party to dispute the application of, or amount provided in, the regulations.

By contrast, the Department's proposed revision to the Sanitary Code Billing Regulations would provide for a confusing and administratively cumbersome process that is inconsistent with the provisions of the state sanitary code and likely to increase the burden of administrative proceedings before the Department.

If the Department chooses to go forward with proposed regulations that require utilities to allocate prior bills to a tenant customer between that customer and a property owner based on information contained in a sanitary code violation issued pursuant to the state sanitary code regulations, KeySpan recommends that the Department first establish a working group of utilities to develop a standard methodology for calculating bills under the regulations and work with the Massachusetts Department of Public Health to develop a standard citation form.

Very truly yours,

Christopher S. Aronson, Counsel
Richard A. Visconti, General Counsel

cc: Marcella Hickey, Hearing Officer (electronic copy)
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